THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.02.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice J.A.K.SAMPATH KUMAR

Habeas Corpus Petition No.107 of 2006

K.Dhanasekaran ... Petitioner

vs.

1. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai-600 008.

2. The Secretary to
Govt. of Tamil Nadu,
Prohibition and Central Excise,
Fort St. George, Chennai. ... Respondents

Petition under Article 226 of the Constitution of India to issue writ of Habeas Corpus, quash the detention order passed by the first respondent in 563/BDFGISV/2005, dated 29.12.2005, produce the detenu/petitioner before this Court and set him at liberty.

For Petitioner : Mr. N.R.Elango

For Respondents : Mr. L.Nageswara Rao,
Senior Counsel for
Mr.S.Jayakumar,
Public Prosecutor.

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O R D E R

P. Sathasivam, J.

The petitioner, by name K.Dhanasekaran, who is detained as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) by the impugned proceedings, dated 29.12.2005, of the Commissioner of Police, Greater Chennai, challenges the same in this Habeas Corpus Petition.

2. According to the petitioner, he is the Councillor of Ward No.130 of the Chennai Corporation and he is also the Divisional Secretary of the DMK party of K.K. Nagar area. On 20.12.2005, he was arrested by the Inspector of Police, MGR Nagar Police Station, in connection with Crime No.747 of 2005, for offences under Sections 120-B, 147, 304, 109, 323 and 325 IPC., which was registered on a complaint from one Munisamy, Revenue Inspector, regarding death of 42 persons in a stampede at the relief token distribution centre at MGR Nagar on 18.12.2005.

3. In the grounds of detention, it is alleged that the petitioner along with others had spread rumours stating that Sunday ie., 18.12.2005, was the last day for the issuance of flood relief tokens and that the distribution was started at 5.00 A.M. It is further alleged that believing the said rumours, huge crowd gathered before the relief tokens distribution centre at MGR Nagar, causing stampede, which resulted in the death of 42 persons and causing injury to 37 persons. In the detention order, it is further stated that a History Sheet was opened during 2002 against the petitioner and the same is still in existence on the file of the Inspector of Police, R-7 K.K. Nagar Police Station. It is also stated that the petitioner had come to adverse notice in R-7 K.K. Nagar Police Station Crime No.571 of 2005 for offences under Sections 147, 148, 336 IPC. and Sections 2 (1) and 3 of TNPPPDL Act; and two earlier cases in Crime Nos.944 of 2003 and 371 of 2004 on the file of K.K. Nagar Police Station, which had ended in acquittal. It is also stated that on the basis of the case in Crime No.747 of 2005 on the file of MGR Nagar Police Station, which relates to offences under Sections 147, 109, 120-B, 304, 323 and 325 IPC., the impugned order of detention has been clamped on the petitioner. The said detention order is under challenge in the above petition.

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4. Heard Mr.N.R.Elango, learned counsel for the petitioner and Mr.L.Nageswara Rao, learned Senior Counsel for the respondents.

5. After taking us through the grounds of detention and all other connected materials, learned counsel for the petitioner has raised the following contentions:-

(i) In view of only one adverse case, the occurrence relating to which is said to have taken place on 19.04.2005, and the ground case dated 18.12.2005, the petitioner cannot be branded as "goonda' in terms of Section 2 (f) of Tamil Nadu Act 14 of 1982, as he has not habitually committed offences under Chapters.XVI, XVII and XXII of the Indian Penal code. Further, on comparing these two cases, it cannot be said that the petitioner indulged in "similar repetitive" acts, hence, the order of detention is not sustainable.

(ii) Though the petitioner has made a representation on 06.01.2006 to the Detaining Authority, which contained the observation made in Crl.O.P. No.35353 of 2005, dated 05.01.2006, in spite of the fact that the Commissioner of Police received the same on the very same date, ie., on 06.01.2006, without forwarding the same to the Approving Authority/Government, he waited for two days and thereafter replied that since the Government approved the detention order on 09.01.2006, he could not pass any order on his representation and forwarded it to the Government, which in turn, rejected the same on 13.01.2006. Learned counsel submits that the Detaining Authority ought not to have waited till 09.01.2006 and that the Authority deliberately kept the representation pending till 09.01.2006 for the Government to approve the order of detention.

(iii) Though the order dated 05.01.2006, made in Crl.O.P. No.35353 of 2005, dismissing the cancellation of bail was delivered to the Detaining Authority on 06.01.2006 itself, the same was not placed before the Government/Approving Authority, which vitiates the order of detention.

(iv) In paragraph No.14 of the grounds of detention, though the Detaining Authority

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has taken note of the involvement of the petitioner in two earlier criminal cases, which ended in acquittal, the copies of the orders relating to those cases were neither placed before the Approving Authority nor supplied to the detenu. According to the counsel, when both the documents were relied on by the Detaining Authority while arriving at subjective satisfaction for passing the order of detention, he ought to have placed the copies of the same before the Approving Authority as well as supplied the same to the detenu; and failure on the part of the Detaining Authority in doing so, vitiates the order of detention.

(v) The Government/Approving Authority failed to consider the order of the learned single Judge of this Court made in Crl.O.P. No.35353 of 2006, dated 05.01.2006, wherein, the learned Judge, while dismissing the petition filed by the State to cancel the bail granted to the petitioner, has observed that " ..... even if taken as true, no offence is made out ....." . In view of the said conclusion, according to the learned counsel, the basis of the detention order is wiped out.

(vi) In view of defect and variation in translation of some of the documents supplied by the Detaining Authority, the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority.

(vii) Inasmuch as the Detaining Authority has made a statement, implicating the political party to which the petitioner belongs to, one way or other, with mala fide intention and also to divert the issue of mishandling on the part of the police and Revenue Officials, he clamped the impugned order of detention on the detenu.

6. Learned Senior Counsel appearing for the respondents, by placing counter affidavit and relevant materials and records, met all the contentions raised by the counsel for petitioner.

(a) According to him, inasmuch as both adverse case and ground case fall under Chapter

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Nos.XVI, XVII and XXII of the Indian Penal Code, that would be sufficient and there need not be "similar repetitive act" as claimed by the petitioner.

(b) There was no delay at all on the part of the Detaining Authority in considering the representation, which was received on 06.01.2006, since the next two days, ie., 07.01.2006 and 08.01.2006, being Saturday and Sunday were holidays, and on 09.01.2006 itself, the Approving Authority confirmed the order of detention, hence, the Detaining Authority rightly forwarded the representation to the Government. In any way, according to him, no prejudice has been caused to the detenu.

(c) With regard to the observations made in the order of the Sessions Court granting bail to the petitioner or in the order passed by the learned Judge of this Court while dismissing the petition filed for cancellation of bail, it is submitted that those observations are not conclusive and not required to be placed before the Detaining Authority or the Approving Authority.

(d) Regarding non-consideration of two cases (which ended in acquittal) referred to in paragraph No.14 of the grounds of detention, learned Senior Counsel submitted that the Detaining Authority has not relied upon those cases or the orders passed therein and that it made only a reference to the same, hence, there is no need to place those orders before the Approving Authority or supply the same to the detenu.

(e) In respect of the contention regarding failure on the part of the Government to consider the order of the learned Judge of this Court, dated 05.01.2006, made in Crl.O.P. No.35353 of 2005, it is stated that since the observations were made while disposing of the Miscellaneous Application, the same are not relevant and no importance need be given for the same.

(f) Regarding the contention relating to non-application of mind on the part of the Detaining Authority or variation in the translation, learned Senior Counsel submitted that

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it is only a typographical error, which is trivial in nature, and that the same has not prejudiced the detenu in any way.

(g) As regards the last contention relating to mala fide, it is stated that since the Commissioner of Police, in his counter affidavit, has denied having given any such press statement, implicating the political party of the petitioner, and in view of constitution of a Judicial Commission to go into the happening of the incident, absolutely, there is no basis for the allegation made by the petitioner.

7. We have considered the grounds of detention, all connected materials and the rival submissions of the counsel on either side.

8. Regarding the first contention, it is useful to refer the definition for the term "Goonda" as provided in Section 2 (f) of Act 14 of 1982, which reads as under:-

"(f) "goonda" means a person who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act No.45 of 1860);".

Sub-clause (a) (iii) of Section-2 is also relevant which reads thus,

"2. Definitions.-- In this Act, unless the context otherwise requires,--

(a) "acting in any manner prejudicial to the maintenance of public order", means--

(i) .....

(ii) .....

(ii-A) .....

(iii) in the case of a goonda, when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order;

....."

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9. It is the claim of the learned counsel for the petitioner that the only adverse case, referred to in the grounds of detention, which relates to the alleged occurrence on 19.04.2005, was registered as Crime No.571 of 2005 on the file of R-7 K.K. Nagar Police Station, for offences under Sections 147, 148 and 336 IPC and Sec.2(1) and 3 of TNPPPDL Act, whereas, the ground case, dated 18.12.2005, relates to various offences under Sections 147, 109, 120-B, 304, 323 and 325 IPC. According to Mr. N.R.Elango, learned counsel for the petitioner, inasmuch as the Detaining Authority has considered the above two cases alone, by comparing the same, it cannot be said that the petitioner indulged in "similar repetitive acts". He also contended that even according to the Detaining Authority, there is a gap of eight months between the adverse case and the ground case. In support of his above contention, he drew our attention to a Division Bench decision of this Court reported in 2004-2-L.W.-Crl.-717 (Murugan, etc. v. The District Collector & District Magistrate, Kanyakumari Dist. & another), to which one of us (P. SATHASIVAM, J.) was a party, more particularly by laying emphasis on the following observations in paragraph No.21 thereof:-

> " While the acts of doing frequently are to be called as the acts of repetition instead of the acts of redoing, what should be available is the time track of the said acts. That is to mean not only the frequency, but also uniformly frequent acts. But, in this case, the first two adverse cases may be said to have been committed with such uniform frequency, because the first adverse case is dated 15.6.1998 and the second adverse case is dated 12.8.1998. In order to attract the habitual commission of offences, the other cases including the ground case should have been committed with such uniform interval of time and not with such a long gap of five years as found in this case. This gap would again snap the applicability of the term 'habitually' in order to attract Section 2(f) of the Tamilnadu Act 14 of 1982. ....."

Again, he laid emphasis on the conclusion made in paragraph No.22 of the above decision, which is extracted below:-

> "..... It was repeatedly held that there should be material on record to show that the reach and potentiality of the single incident was so great as to disturb even the tempo or normal life of the community in the locality or to disturb the general peace and

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tranquility or create a sense of alarm and insecurity in the locality. Mere words in the nature of ritual in the order of detention may not be sufficient. ....."

10. Learned counsel for the petitioner also relied on a Judgment of the Supreme Court reported in 1984 (3) SCC page No.14 (Vijaya Narain Singh Vs. State of Bihar and others). In paragraph No.31, Their Lordships have held as follows:-

" ..... The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omission of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. ....."

In paragraph No.32, the Honourable Supreme Court, after finding that the two incidents relied on by the District Magistrate are of different kinds altogether and that they are, even if true, not repetitions of acts or omissions of the same kind, and after concluding that the District Magistrate failed to apply his mind to the above aspect, quashed the detention order passed against the petitioner therein.

11. Mr.L.Nageswara Rao, learned Senior Counsel for the respondents, by pointing out the definition to the term "Goonda" as provided in Section 2(f) of the Tamil Nadu Act 14 of 1982, submitted,

(a) that the petitioner should be a habitual offender; and

(b) the offences alleged in both instances fall within Chapter Nos.XVI, XVII and XXII of the Indian Penal Code.

He relied on an unreported decision of this Court, dated 03.01.2006, in HCP No.913 of 2005 (to which one of us (P.SATHASIVAM, J.) was a party), wherein, this Court, after relying on various earlier orders of this Court as well as the Supreme Court in 2004 (8) SCC 591 (State of U.P. vs.Sanjai Pratap Gupta), confirmed the detention order. It was held by the Supreme Court in the said decision that the stand that a single act cannot be considered sufficient for holding that public order was affected is without substance. It was further held that it is not the

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number of the acts that matters and what has to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact.

12. Learned Senior Counsel also placed reliance on the decision reported in 1993-Law Weekly (Cri) 113 (Subbaiah v. The Commissioner of Police, Madras City) and he pressed into service the following passage in paragraph No.28:-

> " In our view the question to be decided by the court is whether the materials taken into account by the detaining authority are relevant to enable him to arrive at subjective satisfaction as to whether the person concerned is a goonda and whether he is acting in a manner prejudicial to the maintenance of public order. We have already referred to the definition of 'goonda' in Sec.2(f) Section 3(1) of the Goondas Act provides that the order of detention shall be made with a view to prevent the person concerned from acting in any manner prejudicial to the maintenance of public order. Thus the order of detention under Sec.3(1) is to prevent the person concerned from acting in a manner prejudicial to the public order. 'Acting in a manner prejudicial to the maintenance of public order' has been defined in Sec.2(e). In so far as a goonda is concerned it is defined as follows:
>
> "In the case of a goonda, when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order"
>
> The definition of 'goonda' refers to the habitual commission or attempt to commit or abatement (Sic.) of the commission of offences specified in the section. When a person is found to be a goonda it goes without saying that he is a person who habitually commits or attempts to commit or abets commission of offences. Hence it is not necessary further for the authority to wait for his committing another act which is likely to cause prejudice to the maintenance of public order. If the facts and circumstances placed before the authority are sufficient to enable him to arrive at the conclusion that he is a goonda then those facts and circumstances are sufficient to consider the second question also

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> as to whether such acts will cause prejudice to the maintenance of public order. The object of the Act is to prevent the person concerned to act in a manner prejudicial to the maintenance of public order. It would be futile to contend that the authority should wait till he acts in such a manner. In that case it will not be preventive detention but a case of detention after the commission of the offence. Hence a reading of S.3 (1) together with S.2(a) and (f) of the Goondas Act makes it clear that if the commission of offences is sufficient to brand a person as a goonda within the meaning of S.2(f) they can themselves be taken into account for considering the question whether he is acting in a manner prejudicial to the maintenance of public order.

13. We have carefully verified the factual position in all the above referred cases in the light of the definition to the term "Goonda" as stated in the Tamil Nadu Act 14 of 1982. Though there is no similarity between the offences committed in the adverse case and the ground case, inasmuch it is not in dispute that the offences alleged in both the instances fall within Chapters.XVI, XVII and XXII of IPC., it cannot be said that the Detaining Authority is not right in passing the order of detention. As rightly pointed out, the two instances found in Vijay Narain Singh's case (1984 (3) SCC 14) are completely different. In 2004-2-L.W.-Crl.-717 (cited supra), the ground case was after a period of five years from the last adverse case. This is not the situation in this case. In such circumstances and in view of the fact that in the case on hand, the offences said to have been committed both in the ground case and in the adverse case fall under the Chapters of the Indian Penal Code, we are of the view that depending upon the subjective satisfaction of the Detaining Authority, he is free to pass the detention order. The argument that only when a person indulges in "similar repetitive acts", detention order could be clamped, cannot be accepted. It is made clear that if both adverse case and ground case fall under Chapter Nos.XVI, XVII and XXII of IPC., that would be sufficient, of course, depending upon the subjective satisfaction of the Detaining Authority for clamping the detention order. In the light of the above discussion and conclusion, we are unable to accept the first contention of the learned counsel for the petitioner.

14. Coming to the second contention, it is not in dispute that the petitioner has a right of making representation to the Detaining Authority. In this case, according to the petitioner, he made a representation on 06.01.2006 to the Detaining Authority, wherein he cited the observations made by the learned Judge of this court in Crl.O.P. No.35353 of 2005, dated 05.01.2006. It is also

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his claim that the Detaining Authority, ie., Commissioner of Police, Greater Chennai, though received the same on 06.01.2006, replied only on 09.01.2006, stating that the Government of Tamil Nadu had already approved the detention and hence, he was forwarding his representation dated 06.01.2006 to the Government. The Approving Authority, viz., Government, rejected the said representation on 13.01.2006. It is the grievance of the petitioner that the Detaining Authority ought not to have waited till the detention order was approved by the Government on 09.01.2006 and taken a stand that he could not consider the representation as it was approved by the Government, hence, the right of making representation is thus denied.

15. It is not in dispute that the Commissioner of Police received the representation on 06.01.2006 itself. It is the stand of the Commissioner of Police that 07.01.2006 and 08.01.2006, being Saturday and Sunday, were Holidays and that when he was about to send the representation on 09.01.2006, the Government/Approving Authority confirmed the detention on the same day, ie., on 09.01.2006. If we exclude the Holidays, the Detaining Authority cannot be blamed.

16. Learned Senior Counsel for the respondents relied on the orders of this Court rendered in HCP No.834 of 2005, dated 02.01.2006, and HCP No.550 of 2005, Order dated 24.10.2005. In these cases, this Court, while considering the delay in disposal of the representation of the detenu, excluded the public holidays. Inasmuch as 07.01.2006 and 08.01.2006, being Saturday and Sunday were holidays, the Detaining Authority had no other go except to forward the representation of the detenu to the Government on the next working day, ie., on 09.01.2006. He further contended that because of the same, no prejudice was caused to the detenu. Though Courts, while considering delay in disposal of the representation of the detenu, accept the exclusion of the holidays, in this case, the duty cast on the Detaining Authority is to forward the representation of the detenu to the Approving Authority, ie., the Government.

17. It is the grievance of the petitioner that the said representation which contained the observations made by the Judge of this Court in Crl.O.P. No.35353 of 2006, dated 05.01.2006, was not brought to the notice of the Government. The said petition was filed for cancellation of bail granted in favour of the detenu by the I Additional Sessions Judge, Chennai. While dismissing the said petition filed by the State, the learned Judge, after going through the contents of the First Information Report, which was registered on 18.12.2005 at 5 A.M., Alteration Report dated 19.12.2005 and statement of various persons made under Section 161 Cr.P.C.; and after analysing the same, has concluded thus:-

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> ".... the statements of witnesses do not disclose that it is the respondent and the co-accused Ravi and Senthil spread the rumour for the crowd assembled in the school occurrence place on 18.12.2005 at 3.00 a.m. and it is also not known as to how witnesses Jaisankarnoth, Chinnathai and other witnesses as well the public were assembled on 18.12.2005 at 3.00 a.m. before the Arignar Anna corporation Higher Secondary School situated near M.G.R. Nagar Market for the purpose of obtaining flood relief materials. "

It is the contention of the learned counsel for the petitioner that if these observations were taken into consideration by the Government, the order of detention would not have been approved.

18. Though it is stated that it is only a prima facie conclusion for disposal of the petition filed by the State for cancellation of bail, inasmuch as the learned Judge verified and assessed the materials placed and arrived at a prima facie conclusion that there was no case made out as against the accused/petitioner herein, we are of the view that after receiving the representation, the Commissioner of Police ought to have forwarded the same to the Government through a Special Messenger considering the importance of the matter. It is not in dispute that the said authority was working on 7th and 8th of January, 2006. Since the material/information, which accompanied the representation given by the petitioner is vital in nature, we are of the view that the Detaining Authority ought to have forwarded the same to the Approving Authority at the earliest point of time. As rightly pointed out, if the Approving Authority had an occasion to consider the observation/prima facie conclusion of the learned Judge of this Court, the possibility of not approving the decision of the Detaining Authority might have arisen. Further, in the light of the language used in Sub-section(3) of Section-3 of Tamil Nadu Act 14 of 1982, if a detention order is passed by the Commissioner of Police, it is his bounden duty to report the fact to the State Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter in issue. In view of the peculiar circumstances of this case, viz., the factual conclusion arrived at by the learned Judge of this Court, which goes to the root of the matter, the Detaining Authority ought not to have waited till 09.01.2006 for the Government to approve the order of detention. Accordingly, we accept the contention of the learned counsel for the petitioner.

19. Coming to the third contention, according to the learned counsel for the petitioner, though the order dated 05.01.2006 in Crl.O.P. No.35353 of 2005, was delivered to the Detaining Authority on 06.01.2006 itself, the same was not placed

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before the Approving Authority for consideration. The endorsement by the Registry of this Court, which finds a place at the last page of the order in Crl.O.P. No.35353 of 2005 (page No.31 of the typed-set of papers), shows that the copy was made ready on 06.01.2006 and delivered also on the same date. The petitioner in that petition (Crl.O.P. No.35353/05) is none else than the Sponsoring Authority. Copy was delivered not only to the petitioner but also the Public Prosecutor. In such circumstances, we are of the view that the said order, being relevant one, ought to have been placed before the Government. Failure to do so vitiates the order of detention. Though learned Senior Counsel appearing for the respondents states that the reasoning/conclusions arrived at in a petition for bail are not required to be brought to the notice of or placed before the Approving Authority, in view of the fact that the accused was charged for the death of several persons, that the petition for cancellation of bail has been rejected and that the order of detention has been made based on the incident, we are of the view that the said order, which was delivered as early as on 06.01.2006, ought to have been placed before the Approving Authority and failure to do so definitely vitiates the order of detention.

20. The next contention relates to the reference made in paragraph No.14 of the grounds of detention. In the earlier paragraphs, after referring to about the rumour spread by the petitioner along with his associates Senthil, Ravi, Ramamoorthy and Joseph that there will be no distribution of flood relief tokens after 18.12.2005; sudden heavy rain and gate crashing, which resulted in the stampede, causing death of 42 innocent public; arrest of the detenu on 20.12.2005 at 9.15 A.M.; recording of his statement; production of him before 23rd Metropolitan Magistrate, Chennai; lodging him at Central Prison, Chennai, as remand prisoner till 03.01.2006; opening of History Sheet against the petitioner during 2002 and pendency of the same on the file of the Inspector of Police, R-7 K.K. Nagar Police Station and involvement of the petitioner in two earlier cases registered at R-7 K.K. Nagar PS Cr. No.944/2003 under Sections 341, 323 & 506 (ii) IPC. and R-7 K.K. Nagar PS Cr. No.371/2004 under Sections 147, 148, 448, 427, 324, 504 (ii) read with 149 IPC, the cases upon which filed in the Criminal Court ended in acquittal, the Detaining Authority has concluded thus:-

> " Hence, I am satisfied that Thiru K.Dhanasekaran along with his associates hatched a criminal conspiracy to create a situation of stampede resulting in loss of human lives as it had happened at Vyasarpadi on 6.11.2005, deliberately ....."

The Detaining Authority, based on the materials including the two cases registered at R-7 K.K. Nagar Police Station (referred to in

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paragraph No.14 of the grounds of detention), after satisfying himself with those materials and in order to curtail the petitioner's activities, passed the order of detention. In other words, according to the learned counsel for the petitioner, the said two cases referred to in that paragraph are relevant and relied upon by the Detaining Authority, however, the orders of acquittal in those cases were neither considered nor the copies of which supplied to the petitioner. In such circumstances, according to the counsel, the detention order is vitiated as certain extraneous materials have been referred to and relied on while passing the order of detention.

21. Learned counsel for the petitioner placed reliance upon a decision of the Supreme Court reported in 1990 SCC (Crl) 372 (Vashisht Narain Karwaria v. State). In that case, an argument was made on behalf of the detenu that on the basis of ground Nos.VII and VIII of the Special Leave Petition, in which the appellant expressed his grievance that he had been deprived of making an effective and purposeful representation as envisaged under Article 22 (5) of the Constitution of India since no particulars or details were given in documents I and II enclosed with the grounds of detention in regard to the alleged 'many cases/offences' said to have been registered in various police stations against him and in regard to the allegations that he was a hardened criminal and had a gang often committing heinous crimes and that it had become the habit of the detenu to commit offences. The Supreme Court, after perusing the counter filed on behalf of respondents-1 and 2, accepted the objection raised by the detenu and quashed the detention order on the ground of violation of Article 22(5) of the Constitution.

22. While answering to the said contention, learned Senior Counsel for the respondents contended that the two criminal cases, which ended in acquittal and wherein the petitioner was shown as an accused, were merely referred to by the Detaining Authority and not relied upon in order to arrive at subjective satisfaction. In other words, according to the Senior Counsel, there is no need to place all the documents except the relied upon documents to the Detaining Authority and supply the same to the detenu.

23. Per contra, learned counsel for the petitioner heavily relied on a decision of the Apex Court reported in (1981) 2 SCC 436 (Kirit Kumar Chaman Lal Kundaliya vs. Union of India and others) and vehemently contended that whether the document has been either referred to or relied on, in view of the fact that the Detaining Authority had taken note of the two Criminal Cases, which are said to have been ended in acquittal, those documents ought to have been placed before the Detaining Authority as well as supplied to the detenu as part of the grounds, enabling him to make an effective representation immediately on receiving the grounds of detention.

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In the above referred decision, in paragraph No.12, Their Lordships of the Supreme Court considered the expressions "relied on", "referred to" or "based on" and held thus:-

> " .... Once the documents are referred to in the grounds of detention it becomes the bounden duty of the detaining authority to supply the same to the detenu as part of the grounds or pari pasu the grounds of detention. There is no particular charm in the expressions 'relied on', 'referred to' or 'based on' because ultimately all these expressions signify one thing, namely, that the subjective satisfaction of the detaining authority has been arrived at on the documents mentioned in the grounds of detention. ..."

Thereafter, it has been observed as follows:-

> " .... Thus, it is absolutely clear to us that whether the documents concerned are referred to, relied upon or taken into consideration by the detaining authority, they have to be supplied to the detenu as part of the grounds so as to enable the detenu to make an effective representation immediately on receiving the grounds of detention. This not having been done in the present case the continued detention of the petitioner must be held to be void. "

24. It is true that if we apply the said principle, it has to be held that the documents referred to in Paragraph No.14 of the grounds of detention ought to have been placed before the Detaining Authority and also supplied to the detenu. However, learned Senior Counsel appearing for the respondents, by drawing our attention to a latest decision of the Supreme Court reported in (2005) 7 SCC 70 (J.Abdul Hakeem vs. State of Tamil Nadu), would contend that it is not necessary to place all the documents before the Detaining Authority or supply the same to the detenu. In paragraph No.8, Their Lordships of the Supreme Court have referred to the conclusion arrived at in Radhakrishnan Parabhakaran vs. State of Tamil Nadu ((2000) 9 SCC 170), which reads as follows:-

> " We make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him."

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After referring to the same, Their Lordships have held as follows:-

> " From the aforesaid authorities it is clear that the detenu has a right to be supplied with the material documents on which reliance is placed by the detaining authority for passing the detention order but the detention order will not be vitiated, if the document although referred to in the order is not supplied which is not relied upon by the detaining authority for forming of its opinion or was made the basis for passing the order of detention. The crux of the matter lies in whether the detenu's right to make a representation against the order of detention is hampered by non-supply of the particular document. "

It is clear from the above decision, there is a departure from the view expressed in the decision reported in (1981) 2 SCC 436 (cited supra) and the latest position is only those documents, which have been relied on by the Detaining Authority for forming of its opinion or was made the basis for passing the order of detention, alone have to be supplied to the detenu and not all the documents merely referred to in the grounds of detention.

25. In the light of the said proposition, now let us consider as to whether the two documents mentioned in Paragraph No.14 have been relied on by the Detaining Authority or the same were merely referred while narrating the facts.

We have already referred to the narration of facts by the Detaining Authority leading upto the stampede, which resulted in the death of 42 persons as well as statement of various persons recorded by the Sponsoring Authority (upto paragraph No.14 of the grounds of detention). In the same paragraph, the Detaining Authority, after stating that a History Sheet was opened against the detenu during 2002 and that the same is still in existence on the file of the Inspector of Police, R7 K.K. Nagar Police Station; and taking note of two earlier cases viz., registered at R-7 K.K. Nagar PS Cr. No.944/2003 under Sections 341, 323 & 506 (ii) IPC. and R-7 KK Nagar PS Cr. No.371/2004 under Sections 147, 148, 448, 427, 324, 504 (ii) read with 149 IPC, which ended in acquittal; and on being satisfied with the above mentioned materials, has concluded that K.Dhanasekaran, the detenu/petitioner, along with his associates, hatched a criminal conspiracy and created a situation of stampede resulting in loss of human life and that his activities are prejudicial to the maintenance of public order in terms of Section-2(f) of Tamil Nadu Act 14 of 1982 and passed the order of detention. In such circumstances, in view of the fact that heavy reliance was made not only on the adverse case dated 19.04.2005 but also on the two criminal cases, which ended in

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acquittal, by the authority while arriving at the subjective satisfaction, we are of the view that the said documents were very much relied on by the Detaining Authority and, in that event, even as per the decision relied on by the learned Senior Counsel for the respondents, viz., (2005)7 SCC 70 (cited supra), the Detaining Authority ought to have supplied copies of the same to the petitioner along with the grounds of detention and due to non-supply of the same, the detenu's right to make effective representation is hampered. Accordingly, we hold that the contention as to the necessity of supplying copies of those documents to the detenu raised by the learned counsel for the petitioner is well founded.

26. Learned counsel for the petitioner further contended that the Approving Authority ought to have considered the observations and conclusion arrived at by the Sessions Court as well as this Court in the order of grant of bail and dismissal of the petition filed by the State to cancel the bail with regard to the occurrence that had taken place on 18.12.2005, which was described as ground case, and failure to do so, vitiates the detention order.

27. Here again, learned Senior Counsel for the respondents submitted that even if the said observations/conclusion ran against the Detaining Authority, inasmuch as the same were made while dismissing the petition filed for cancellation of bail, the same is not conclusive, not relevant and no importance need be attached thereto while considering the detention order.

28. In the order dated 05.01.2006 made in Crl.O.P. No.35353 of 2005, learned single Judge, after going through the statements recorded from various persons by the Inspector of Police, R-7 K.K. Nagar Police Station, arrived at a specific conclusion that no offence was made out. As rightly pointed out, had this order been placed before the Approving Authority, it might have influenced the mind of the said authority and there was every possibility of not approving the detention order clamped by the Detaining Authority. We accept the contention raised by the learned counsel for the petitioner.

29. The other contention of the learned counsel for the petitioner is that the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority, for which, he cited two instances. The first one relates to the Arrest Report under Section 62 Cr.P.C. According to the counsel for the petitioner, at page No.594 of the booklet supplied to the detenu, the English version of the Arrest Report shows that that the date of commission of the offence is 18.12.2005 and the detenu was taken to custody on 20.12.2005. However, the vernacular translation of the document, which is available at page

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No.595 of the paper book shows that the petitioner was arrested on 18.12.2005 against Serial No.2; and also he was arrested on 26.12.2005 against Serial No.4. The grievance of the petitioner is that though he made a representation pointing out these contradictory versions and stating that he was not in a position to make an effective representation, the Approving Authority, viz., the Government, rejected his representation on the ground that it is only a typographical error. According to the counsel, the errors referred above occurred in the Arrest Report, which is a vital document to be considered by the Detaining Authority, because, that will only show the date of arrest and custody of the detenu, and if typographical error is allowed to creep in such a basic and vital document, it only shows the non-application of mind on the part of the Detaining Authority.

30. In the light of the said contention, we verified the Arrest Report both English and Tamil versions available at page Nos.594 and 595 respectively of the Booklet. As rightly pointed out, in the English version, in Serial No.2, it is stated,

" 2. Date of Commission. 18.12.05."

In Serial No.4, it is stated that he was taken to custody on 20.12.2005.

However, in the Tamil version available at page No.595, column No.2 says that the petitioner was arrested on 18.12.2005 (கைது செய்யப்பட்ட தேதி - 18.12.05) and again in Column No.4, it is stated that he was arrested on 26.12.2005.

31. Mr.L.Nageswara Rao, learned Senior Counsel for the respondents, contended that the errors in the Tamil and English versions of the Arrest Report, available at page Nos.594 and 595 respectively of the booklet, are typographical errors and inasmuch as in the said documents, in Serial Nos.5 and 6, correct details have been furnished, the mistakes in Serial Nos.2 and 4 are to be ignored as the same are trivial in nature. In support of his contention, he relied on the order dated 05.08.2003 made in HCP No.2380 of 2002, wherein, it is stated as follows:-

> " It is not every minor error in the order that would justify the inference of non application of mind. Venial mistakes and trivial errors, typographical and clerical mistakes which do not impinge on the substance of the matter as also the minor translation errors which do not affect the substance cannot be regarded as constituting sufficient basis to support an inference of non application of mind on the part of the detaining authority to the material which he was required to consider before forming his subjective satisfaction regarding the need for detention. "

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He also relied an order of this Court made in HCP No.851 of 2005, dated 18.01.2006, wherein, this Court held that only in the case of major error in translation, the order has to be interfered with on the ground of non-application of mind.

32. It is true that if the error is trivial in nature, the same can be ignored. However, the document relied on in this case is the Arrest Report, a vital document, which contains the date of arrest, as to when the detenu was taken to custody, etc. The said document cannot be termed as an ordinary one and the mistake pointed out therein cannot be ignored lightly as trivial in nature. Further, when the petitioner made a representation, pointing out these contradictory versions, alleging that he was not in a position to make effective representation, it is seen that the Approving Authority, viz., the Government, rejected the same only on the ground of typographical error. It is also brought to our notice that when the detenu was produced before the 23rd Metropolitan Magistrate, Saidapet, the learned Magistrate, by his order dated 20.12.2005, remanded him till 03.01.2006. In the same order, he also noted that the accused reported that he was taken by the police yesterday (ie., 19.12.2005) at 9 O' clock. In view of the statement of the petitioner before the learned Magistrate, we are of the view that the authorities ought to have taken more interest in mentioning the date of commission of the offence and the date on which the accused was taken into custody correctly both in the English and Tamil version of the Arrest Report. Inasmuch as the Arrest Report is a vital document, which contained the date of arrest and custody of the detenu, the discrepancies found in column Nos.2 and 4 in both English and Tamil versions cannot be termed as trivial in nature. As rightly pointed out, the said discrepancy amply shows the non-application of mind on the part of the Detaining Authority.

33. The other instance referred to by the learned counsel for the petitioner is the letter dated 12.01.2006 of the Detaining Authority, in and by which, he supplied the order of the High Court dated 05.01.2006. However, in the said letter, in the 'subject' column, it is stated in Tamil as follows:-

" பொருள் தடுப்புக்காவல்–தடுப்புக்காவல் சிறைவாசி திரு.தனசேகரன் வழங்கப்பட்ட தடுப்புக்காவல் ஆணையின் வீட்டு இலக்க எண்ணில் ஏற்பட்ட தட்டச்சுபிழையை திருத்தம் செய்தல் குறித்து "

Though the Detaining Authority has forwarded the copy of the Order of the High Court, the subject cited in the said letter has nothing to do with the same. It is true that the said letter dated

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12.01.2006 is well after passing of the detention order and though the said mistake cannot go to the root of the matter, as rightly pointed out by the learned counsel for the petitioner, everywhere the Detaining Authority was in a hurry and committed several mistakes.

34. Finally, learned counsel for the petitioner submitted that the detention order is liable to be interfered with on the ground of mala fide on the part of the Detaining Authority. According to the counsel, the Commissioner of Police, Greater Chennai, had given a press statement on 18.12.2005 itself that the mishap was due to the rumours spread by persons belonging to DMK Party. It is also stated that a legal notice was sent to the Commissioner of Police by the Treasurer of the said party. This, according to the learned counsel for the petitioner, shows that the Detaining Authority was prejudiced and has passed the order of detention against the petitioner as he is a DMK party functionary and Councillor of the adjoining Ward.

35. Learned Senior Counsel has pointed out that in paragraph No.14 of the counter affidavit filed by the Detaining Authority, the Commissioner of Police has specifically denied the press statement as alleged. In the said paragraph, the Commissioner of Police has specifically stated, "... I have not given any press statement as alleged. ....". It is also brought to our notice that the Government have appointed a Judicial Commission with reference to the stampede and death of 42 persons. In view of the same and in the light of the specific denial by the Detaining Authority and the information furnished by the learned Senior Counsel, we are satisfied that the petitioner has not substantiated the mala fide as alleged.

In the light of what is stated above, We allow this Habeas Corpus Petition, quashing the impugned order of detention dated 29.12.2005. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case or cause.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

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To

1. The Commissioner of Police, Greater Chennai,
Egmore, Chennai 600 008.

2. The Secretary to Govt. of Tamil Nadu,
Prohibition and Central Excise Department,
Fort St. George, Chennai. 9

3. The Superintendent, Central Prison, Chennai (In duplicate
for communication to the detenu).

4. The Secretary, Public (Law & Order) Dept.,
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

2 ccs to Mr.N.R. Elango, Advocate, Sr. 6878
1 cc to Public Prosecutor, SR. 6859

No.107 of 2006.

GM (CO)
kk 20/2

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